(1)

Supreme Court, U.S.
FILED

97 1703 APR 9 1998

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

SHONG-CHING TONG,

Petitioner

v.

JACK P. HUNT, MARTIN L. GOETSCH, JENNIFER WENGER, COUNTY OF LOS ANGELES

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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48 pp

QUESTIONS PRESENTED

1. Whether Ignorances Of Respondents To Transfer Petitioner's Appeal Are Judicial Act?

2. Whether Respondents' Ignorances To Process Petitioner's Appeal Constitute Obstruction Of Justice?

3. Whether 42 U.S.C. Section 1983 Applies To Respondents' Failures To Process Petitioner's Appeal?

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Petitioner prays that a writ of certiorari issue to review the memorandum of the United States Court of Appeals for the Ninth Circuit dated September 29, 1997.

OPINIONS BELOW

The Memorandum of the Court of Appeals in affirming the dismissal of petitioner's 42 U.S.C. Section 1983 action was issued on September 29, 1997 and is printed in Appendix B.

On January 9, 1998, The Appellate Court denied petitioner's Petition for Rehearing. The Order is printed in Appendix A.

The "Petition for Rehearing and Suggestion for Rehearing En Banc" is printed in Appendix C.

The "Appellant's Reply Brief" is printed in Appendix D.

JURISDICTION

The Memorandum of the United States

BEST AVAILA

Court of Appeals for the Ninth Circuit was filed on September 29, 1997 and the Order denying Petition for Rehearing was filed on January 9, 1998. The jurisdic-tion of this Court rests on 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, previleges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

A. Procedural History:

This case was filed by petitioner on June 28, 1995 for damages against defendants Jack P. Hunt ("Hunt"), Martin L.

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Goetsch ("Goetsch"), Jennifer Wenger ("Wenger"), and the County of Los Angeles ("L.A. County") after defendants Hunt, Goetsch, and Wenger ignored petitioner's requests to transfer petitioner's appeal case no. VP 94555 to Los Angeles Superior Court.

On or about August 8, 1995, magistrate judge McMahon, after he has been sued twice by petitioner for his violations of ADA, of petitioner's consti-tutional rights, inter alia, request-ed magistrate judge Brian Q. Robbins ("Robbins") to transfer the instant case to him even though he knew he should not do so.

On August 28, 1995, petitioner's "Motion" to disqualify magistrate judge James W. McMahon was filed after he has repeatedly abused the judicial process

and shown his bias and prejudice toward petitioner.

On October 2, 1995, district judge J. Spencer Letts denied petitioner's motion to disqualify magistrate judge McMahon.

On February 21, 1996, petitioner's "Motion" to disqualify district judge Robert M. Takasugi was filed after he had repeatedly abused the judicial process and shown his bias and prejudice toward Chinese people.

On March 12, 1996, district judge Harry L. Hupp denied petitioner's motion to disqualify district judge Takasugi.

District judge Takasugi recused himself and the case was reassigned to district judge Kim M. Wardlaw on November 6, 1996.

B. Statement of Facts

1. The instant case is not related

to any case shopped by magistrate judge McMahon.

2. The instant case had not been consolidated with any case after shopped by magistrate judge McMahon even though he had alleged they are related.

3. Magistrate judge McMahon should disqualify himself from the instant case after he has been sued twice by petitioner as he did in case no. CV 96-4787-GNK (Mc).

4. District judge J. Spencer Letts erred in denying of petitioner's motion to disqualify magistrate judge James W. McMahon when facts and evidence presented have shown he has repeatedly abused his judicial position.

5. Defendants Hunt, Goetsch, and Wenger have repeatedly ignored the law and rules to transfer petitioner's appeal, case no. VP 94555, to Los Angeles

Superior Court.

6. The case no. VP 94555 has not been transferred to Los Angeles Suoerior Court since October, 1993.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Erred In Its Resolution Of An Important And Recurring Issue Significantly Affecting The Administration Of Justice - Whether Defendants Have Any Authority To Ignore The Appeal Of Case No. VP 94555

In Crooks v. Maynard 913 F.2d 699 (9th Cir. 1990), the court held that:

> "Mere fact that defendant is judge does not mean that defendant has absolute immunity; absolute immunity only applies to judicial acts and not administrative, legislative, and executive functions that judges may perform."

Title 42 U.S.C. Section 1983 provides

remedy and the following cases provide examples to recover damages from wrong-doers by the abuse of government authori-ty and to deter future constitutional violations:

(1) Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979

(2) Monroe v. Pape (1961) 365 U. S. at 184, 81 S.Ct. at 482

(3) D. C. Court of Appeals v. Feldman 460 U.S. 462, 490, Mr. Justice STEVENS, in his dissenting opinion, stated that:

> "If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the Federal question jurisdiction of the Federal Court. 28 U.S.C. Section 1331.

(4) Stump v. Sparkman 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099, Mr. Justice STEWART in his dissenting opinion, had

stated "A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.

(5) Pierson v. Ray 87 S.Ct. 1213, 1220 (1967). Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."
>
> "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."
>
> "There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221
>
> "The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied . . . . Some State Courts have been instruments of

> suppression of civil rights. . . ; but the wrong to be remedied still exists." at p. 1222
>
> "I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences." at p 1223

In the instant case as demonstrated by Appendixes C and D, respondents Hunt, Goetsch and Wenger had acted unconstitutionally, unlawfully, and oppressively. Furthermore, what they did was inconsistent with actual justice and not warranted by any principle of law.

Since the Civil Rights Act authorizes any person, who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doers in the Federal Courts, petitioner's complaint was not seeking appellate review and has stated a Federal

Cause of Action in the instant case.

II.

Defendants Are Not Immuned
Because Their Acts and Conduct Were
Willful, Unlawful, and Oppressive

As the attached Appendixes C and D depict, immunity should not be available to Hunt, Goetsch, and Wenger, because their acts and conduct were willful, unlawful, oppressive, unethical, and unprofessional and they had shown no respect to the law and the judicial process.

The United States Constitution, Fifth Amendment provides that respondents, shall not deprive of petitioner's life, liberty, or property without due process of law

The United States Constitution, Fourteenth Amendment, Sec. One provides

that respondents shall not deprive petitioner's life, liberty, or property, without due process of law; or deny petitioner within its jurisdiction the equal protection of laws.

California Rules of Court, Rules 181 thru 190 provide procedures for processing appeal. The failures of defen -dents to follow Rules 181 thru 190 are not judicial acts.

Since respondents Hunt, Goetsch, and Wenger had acted oppressively, unethical -ly and unprofessionally, and the County of Los Angeles had failed to take action regarding Goetsch's and Wenger's wrongful and unlawful acts and conduct, the County of Los Angeles is liable for damages caused by respondents.

CONCLUSION

Mr. Justice BRENNAN of the United

States Supreme Court had stated in Adickes v. Kress & Co., 398 U. S. 144, 190, 90 S.Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

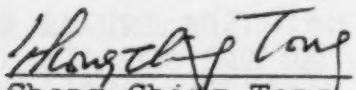
> "How 'Uniquely amiss' it would be, therefore, if the government itself - ' the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liability for the injury it has begotten."

This case is suing for damages for their willful and unlawful violations of petitioner's Civil Rights, because their acts and conduct are not judicial acts.

Based upon all of the foregoing points and authorities, respondents' acts and conduct had violated clearly established State and Federal Statutory and the Constitutional Rights of which a reasonable person would have known.

Petitioner respectfully requests that a Writ of Certiorari be issued to review the judgment in the instant case.

Dated: April 7, 1998



Shong-Ching Tong,
Petitioner Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHONG-CHING TONG,	) No. 97-55252
Plaintiff-Appellant,	) D.C. No. CV 95-04292-KMW
v.	) Central California
JACK P. HUNT, MARTIN L. GOETSCH, JENNIFER WENGER, COUNTY OF LOS ANGELES,	) ORDER
Defendants/Appellees.	) FILED JAN. 9, 1998 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Before: HALL, BRUNETTI, and THOMAS, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc.

Fed.R.App.P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHONG-CHING TONG,	) No. 97-55252
Plaintiff-Appellant,	) D.C. No. CV 95-04292-KMW
v.	) Central California
JACK P. HUNT, MARTIN L. GOETSCH, JENNIFER WENGER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; LOS	) MEMORANDUM*
Defendants/Appellees.	) FILED SEPT. 29, 1997
	) CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Appeal from the United States District Court for the Central District of California
KIM McLANE WARDLAW, District Judge, presiding

Submitted September 22, 1997**

Before: HALL, BRUNETTI, and THOMAS, Circuit Judges.

* This dosposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case

Shong-Ching Tong appeals pro se the district court's dismissal of his 42 U.S. C. Section 1983 action.[1/] We affirm.

In his complaint, Tong alleged that the County of Los Angeles and a municipal court judge, commissioner and administrator violated his constitutional rights in connection with his conviction for driving without a seat belt. The district court dismissed his claims against the court administrator, but granted his leave to amend as to the remaining defendants. Tong failed to file an amended complaint, and the district court dismissed his action for failure to prosecute.

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suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

1/ Contrary to the defendants' contention, Tong's appeal has not become moot by the Los Angeles Superior Court's reversal of his conviction because he seeks damages. See Z Channel Ltd. Partnership v. Home Post Office, Inc., 931 F.2d 1338, 1340-41 (9th Cir. 1991).

We agree with the district court that Tong's claims against the court commissioner are barred by the doctrine of judicial immunity because the commissioner was acting in a judicial capacity in presiding at Tong's trial and sentencing. See Franceschi v. Schwartz, 57 F.3d 828, 830-31 (9th Cir. 1995).

The district court did not abuse its discretion by dismissing Tong's remaining claims for failure to prosecute in light of his failure to file an amended complaint within the time specified by the magistrate judge, despite the magistrate judge's warning that failure to do so could result in the dismissal of his case. See Ferdil v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992).

Finally, we reject Tong's assertion that the district court improperly denied

his motions to disqualify the district judge and the magistrate judge. See Liteky v. United States, 510 U.S. 540, 555 (1994)

AFFIRMED.

I.

INTRODUCTION AND STATEMENT OF APPELLANT

Appellant Shong-Ching Tong seeks re-hearing en banc of the September 29, 1997 Panel Memorandum (Hall, J.; Brunetti, J.; and Thomas, J.) affirming the District Court's judgment dismissing appell-ant's Complaint for the following reasons: 1. The claims against defendant Martin L. Goetsch is barred as the court commissioner was acting in a judicial capacity and is immuned pursuant the doctrine of judicial immunity; 2. The remaining claims against defendants Jack P. Hunt, Jennifer Wenger, and the County of Los Angeles are dismissed for plaintiff's failure to prosecute in light of plaintiff's failure to file an amended complaint.

In the judgment of Appellant, rehear

-ing en banc is needed because: 1) the Panel's Memorandum has overlooked the facts that defendant Goetsch's failure to transfer appellant's appeal to the Appellate Department of the Los Angeles Superior Court ("LASC") since 1993 was/is not judicial act and defendant Goetsch has failed to give any authority supporting his claim that his ignorance and refusal to proceess the appeal, case no. VP 94555 was/is judicial act and was/is allowed by the law or rule, 2) defendant Hunt has failed to give any authority supporting his claims, as a presiding judge, that his failures to properly and responsively supervise defendants Goetsch and Wenger were judicial acts and NOT administrative act (Ex. 1), 3) defendant Wenger has failed to give any authority, as the Court Administrator of the Pomona

Municipal Court, supporting her failures to process plaintiff's appeal, case no. VP 94555 was permitted by the law or rule (Ex. 2), and 4) the district court has failed to give any authority support -ing its ruling that Defendants Goetsch, Hunt, and Wenger could ignore the law, the Rule, and betrayed their Oaths of Office.

II.

PETITION FOR REHEARING EN BANC

A. THE PANEL'S MEMORANDUM IS INCONSISTENT WITH THE STATUTE THAT THE JUDGMENT SHOULD BE OVERTURNED WHEN MAGISTRATE JUDGE JAMES W. MCMAHON FAILED TO REMOVE HIMSELF FROM THE CASE AND WHEN HE KNEW HE CANNOT/COULD NOT BE IMPARTIAL

---

28 U.S.C. Section 455(a) provides that a federal judge must disqualify him -self or herself from any proceeding in which his or her impartiality might reasonably be questioned.

As Exhibits 7 thru 9 demonstarate, magistrate judge James W. McMahon has acted willfully, unethically, and unpro -fessionally when he shopped for unrelat -ed cases and knew he has been acted like a "Hatchet Man" for someone and a Racist and paid no respect to the law and judi -cial integrity (ER 35 shows district judge Robert M. Takasugi and magistrate judge James W. McMahon failed to state on what ground case no. CV 94-4784-RMT (MC) was related to case no. CV 95-4292 -JSL (BQR)).

Since magistrate judge was acted improperly, district judge Robert M. Takasugi had shopped for the case and disqualified himself from the case and district judge Kim M. Wardlaw has acted as a "Rubber Stamp" in the instant case, therefore, the rehearing en banc should

be granted because: 1) If there is a law such as 28 U.S.C. Sections 144 or 455, then, magistrate judge James W. McMahon should be disqualified from the case no. CV 95-04292 (Exs. 7, 8); 2) If magistrate judge James W. McMahon had ignored the law as aforesaid, the judgment resulted from his NO impartiality should be vacated.

B. THE PANEL'S MEMORANDUM CONFLICTS WITH THE CASE CROOKS v. MAYNARD AND FAILS TO GIVE ANY AUTHORITY THAT DEFENDANTS COULD/CAN IGNORE THE LAW/RULE NOT TO TRANSFER THE APPEAL CASE NO. VP 94555 TO THE APPELLATE DEPARTMENT OF LASC

In Crooks v. Maynard (9th Cir. 1990) 913 F2d 699, the Court held that absolute immunity only applies to "judicial act" and not administrative acts and that defendant is a judge does not mean that defendant has absolute immunity.

Since appellant has the right to

appeal to the Appellate Department of the Los Angeles Superior Court ("LASC") to review defendant Goetsch's ruling in case no. VP 94555, thus, defendants Hunt, Goetsch, and Wenger could not/cannot ignore the law/rule not to transfer appel -lant's appeal, case no. VP 94555, to the Appellate Department of LASC.

C. THE PANEL'S MEMORANDUM MISSTATED THE FACTS AND EVIDENCE OF CASE NO. CT 56693 WITH CASE NO. VP 94555

Exhibit 5's Memorandum Judgment was for case no. CT 56693, not for case no. VP 94555.

Since October, 1993, the case no. VP 94555 has not been transferred to the Appellate Department of LASC. As results of defendants' failures and ignorance in processing appellant's appeal in case no. VP 94555, defendants were sued in the instant case. The Panel has been confus

-ed with these cases.

III.

PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC

A. THE PANEL SHOULD REVERSE THE DISTRICT COURT'S JUDGMENT THAT MAGISTRATE JUDGE JAMES W. MCMAHON AND DISTRICT JUDGE KIM M. WARDLAW HAD ACTED IMPROPERLY IN THE INSTANT CASE

In Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."
>
> "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."
>
> "There had been a complete breakdown in the administration of justice in certain States and laws nondiscrimi-natory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. . . . Some State Courts have been instru -ments of suppression of civil rights. . . ; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *." at p 1223

Exhibits 1 thru 6 and 10 contained in this Petition can prove Mr. Justice DOUGLAS' point of view regarding those wanton, oppressive, unethical, unprofes -sional, and wacky judges, commissioners, and court administrators.

Since district judge Kim M. Wardlaw and magistrate judge James W. McMahon had knowingly and intentionally ignored facts and evidence that defendants Hunt, Goetsch, and Wenger were not entitled to

any immunity when they willfully, unlawfully, and wantonly discarded the law/rule not to transfer appellant's appeal, case no. VP 94555, to the Appellate Department of LASC, the district court's judgment should be reversed and vacated.

B. THE PANEL SHOULD VACATE ITS DECISION BECAUSE DISTRICT COURT FAILED TO CITE ANY AUTHORITY THAT DEFENDANTS HUNT, GOETSCH, AND WENGER HAD THE AUTHORITY NOT TO TRANSFER APPELLANT'S APPEAL, CASE NO. VP 94555, TO THE APPELLATE DEPARTMENT OF LASC

Rules 181 thru 190 of California Rules of Court provide procedures for defendants to process appellant's appeal, case no. VP 94555, to the Appellate Department of LASC.

If appellant had followed the Rules to appeal the case no. VP 94555 to the Appellate Department of LASC, then, defen-dants had/have no authority not to transfer appellant's appeal, case no. VP

94555 to the Appellate Department of LASC.

Since the district court and the Panel did not give any authority support -ing their rulings that defendants', Hunt, Goetsch, and Wenger, failures and ignorance were allowed by the law/rule, this Petition for Rehearing En Banc should be granted.

IV.

CONCLUSION

For the foregoing reasons, appellant requests rehearing of the issues raised above, and/or rehearing en banc, as appropriate, for reasons set out in the Statement of Appellant, above.

DATED: October 12, 1997

Shong-Ching Tong,
Appellant Pro Se

List of Exhibits (Ex.)

1. Appellant's 4/11/94 letter to defen -dant Hunt

2. Appellant's 2/23/95 letter to defendant Wenger

3. Policy of Non-Discrimination on the Basis of Disabiity
County of Los Angeles

   Disabled Person Parking Placards (1993, 1995, 1997)

4. Decision and Order, case no. 93C04927, 2/9/95

5. Memorandum Judgment, CT 56693, 4/9/97

6. Memorandum Judgment, 96U00060, 7/29/97

7. Pages 3, 4 of Final Report and Recommendation of United States Magistrate Judge in a Civil Rights Case, 11/19/96 case no. 95-4292 (the Final Report did not serve on appellant by the court)

8. Order to Reassign Case (Magistrate Judge), case no. CV 96-4787-GHK (Mc), case name CHOW, et al. v. CLARK, et al., 8/16/96

9. Orders to Reassign Case due to Self-Recuse, case nos. CV 96--4488-RMT (Mc), Ma, et al. v. Goetsch, et al., 10/4/96; CV 96-4292-RMT (Mc), TONG v. HUNT, et al., 11/6/96; CV 95-6673-RMT (BQR), TONG v. James W. McMahon, et al., 11/6/96

10. State Court System Bias Charged,
Inland Valley Daily Bulletin, 9/28/93

Study: Minorities distrust the courts,
Inland Valley Daily Bulletin, 1/30/97

APPELLANT'S REPLY BRIEF

COMES NOW the Appellant/Plaintiff Shong-Ching Tong ("plaintiff") and submits his "Appellant's Reply Brief" in response to defendants/appellees', Jack P. Hunt ("Hunt"), Martin L. Goetsch ("Goetsch"), Jennifer Wenger ("Wenger"), and the County of Los Angeles ("L.A. County"), "Appellees' Answering Brief" ("AAB") as follows:

1. THE FEDERAL COURTS HAVE SUBJECT MATTER JURISDICTION BECAUSE THE REPEATED FAILURES OF DEFENDANTS TO PROCESS VP 94555 APPEAL TO THE APPELLATE DEPARTMENT OF LOS ANGELES SUPERIOR COURT HAD VIOLATED PLAINTIFF'S CIVIL RIGHTS

Exhibit 16 (Memorandum Judgment) shows the Appellate Department of Los Angeles Superior Court ordered defendants to dismiss case no. CT 56693. The case no. VP 94555 was not mentioned because defendants have repeatedly failed to

process the appeal, case no. VP 94555, to the Appellate Department of Los Angeles Superior Court. Defendants should not knowingly misstate, misrepre-sent, or distort this fact in their BRIEF that The Case Is Moot (AAB, page 12).

The Federal Courts have subject matter jurisdiction because defendants' acts were not judicial acts. Defendants have repeatedly failed to discharge their administrative duties in handling plain-tiff's appeal, case no. VP 94555 since October, 1993 (Crooks v. Maynard 913 F2d 699 (9th Cir. 1990)).

Moreover, if defendants ignored plain-tif's appeal in case no. VP 94555, then, the Appellate Department of Los Angeles Superior Court, the California Court of Appeal, the California Supreme Court, and the U. S. Supreme Court will never have

any chance to review defendant Goetsch's ruling. Thus, defendants have again know -ingly, fraudulently, falsely, unethical -ly, and unprofessionally misstated, misrepresented, and distorted the fact or legal authority to this Court in their "AAB".

2. THE DOCTRINE OF JUDICIAL IMMUNITY DOES NOT BAR CLAIMS AGAINST DEFEN -DANTS BECAUSE DEFENDANTS' ACTS AND CONDUCT WERE/ARE NOT JUDICIAL ACTS

As we all know that the filing of a "Notice of Appeal" deprieves defendants' jurisdiction of case no. VP 94555.

The jobs in case no. VP 94555 for defendants to perform were processing the said appeal as per provisions of Califor -nia Rules of Court, Rules 184 thru 187.

Since defendants have repeatedly, willfully, unlawfully, unethically, and unprofessionally ignored the afore-said

Rules of California Rules of Court regard -ing the appeal, case no. VP 94555, the Doctrine of Judicial Immunity does not bar claims against defendants, who have repeatedly failed to faithfully discharge their administrative duties in case no. VP 94555.

In Karim-Panahi v. Los Angeles Police Department (9th Cir. 1988) 839 F2d 621, 626, the court held that:

> "Section 1985 prescribes conspiracies to interfere with certain civil rights."
>
> "Section 1986 imposes liability on every person who knows of an impend -ing violation of section 1985 and neglects or refuses to prevent the violation."

Since defendants have failed to present evidence to support their false assertions, defendants should be held for damages caused by their unlawful, unethi-cal, and unprofessional acts and conduct.

3. THERE ARE AMPLE FACTS AND EVIDENCE CONTAINED IN PLAINTIFF'S COMPLAINT SUPPORTING PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANTS' WILLFUL AND FRAUDULENT ACTS. OTHERWISE, DISTRICT JUDGE WARDLAW ABUSED HIS DISCRETION WHEN DISTRICT JUDGE WARDLAW FAILED TO ALLOW PLAINTIFF TO AMEND THE COMPLAINT

In defendants' AAB, page 9, defendants stated that Appellant's Complaint does not state any understandable or cogni-zable claim against defendants. Defen -dants' statements have proved that district judge Wardlaw should not dismiss plaintiff's complaint and abuse his discretion (AOB, pages 13 thru 15; Haddock v. Board of Dental Examiners of California (9th Cir. 1985) 777 F2d 462, 464; Doe v. United States Department of Justice (DC Cir. 1985) 753 F2d 1092, 1104).

4. DISTRICT JUDGE WARDLAW ABUSED HIS DISCRETION IN DISMISSING PLAINTIFF'S ADA CLAIMS AGAINST

DEFENDANTS

42 U.S.C. Sections 2000a thru 2003a provide:

> "An individual, or class of indivi-duals, may not be discriminated against on the basis of a disabi-lity or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangement by (1) denying the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity."

> "An individual with a disability is discriminated against whenever goods, services, facilities, privi-leges, advantages, and accommoda-tions are not afforded to an indivi-dual with a disability in most integregated setting appropriate to the needs of the individual, - discriminatory standards or criteria or methods of administra-tion are utilized."

In Maureen, Harrison and Steve Gilbert's "The Americans with Disabili-ties Act Handbook", Excellent Books, 1992, Former President Goerge Bush's statement, upon signing the "Americans

with Disabilities Act of 1990", had been printed in the Handbook:

> " . . . . The Americans with Disabi-lities Act (ADA) is such legislation. It promises to open up all aspects of American life to individuals with disabilities - employment opportunities, government services, public accommodations, transportation, and telecommunications." (Page 1).

Since the Pomona Municipal Court is one of the Branch of Government offering government services and is open to public, defendants should not discriminate against any disabled person.

The plaintiff's assertions supported by evidence and facts as contained in the Complaint and "Opposition to Defendants' Motion to Dismiss" can show defendants have not only repeatedly violated the ADA, those said facts and evidence can also show defendants have no human hearts when defendants repeatedly and willfully ignored the appeal, case no. VP 94555 and

lied about it (AAB, page 12).

5. THE INSTANT CASE IS NOT MOOT. DEFENDANTS HAVE AGAIN COMMITTED FRAUDS ON THE COURTS

Defendants committed fraud on this Court (AAB, page 12). The Appellate Department of Los Angeles Superior Court ordered defendants to dismiss case no. CT 56693. Up to this date, defendants have ignored the Appellate Department's Order.

As to case no. VP 94555's appeal, defendants are still sleeping on this case and have failed to transfer to Appellate Department of Los Angeles Superior Court.

As Exhibit 16 shows, the Appellate Department of Los Angeles Superior Court had ordered defendant Hunt, who was/is the presiding judge, or S. Clark Moore, who is a retired judge(?) with poor

health and was paid per diem by defendant Hunt, to dismiss the case no. CT 56693 and to give money back to plaintiff. Defendants have ignored the said ORDER since April 9, 1997.

The Exhibit 16 had never mentioned the case no. VP 94555, which is the case defendants were being sued for.

Further, the failure of defendants to present any evidence showing that the case no. VP 94555 had been dismissed can show defendants have not only acted fraud -ulently, knowingly, unthically, and unprofessionally in the instant case, this Exhibit can also show defendants have committed frauds on this Court when defendants knowingly misstated, misrepresented, and distorted the facts and evidence that the case is moot (AAB. page 12).

6. CONCLUSION

42 U.S.C. Section 1983 provides remedy for people to recover damages from those wrongdoers, who acted under color of state law and who had willfully, unlaw -fully, wantonly, and oppressively violat -ed plaintiff's protected constitutional rights.

42 U.S.C. Sections 1985 and 1986 provide remedies for people to recover damages from those wrongdoers who conspir -ed to violate plaintiff's protected constitutional rights.

Defendants are not immune, because defendants' acts were not judicial acts and they have willfully and unlawfully deprived plaintiff of plaintiff's protect -ed liberty and property interest.

In light of the foregoing points and authorities, defendants should be held

for damages caused by their unlawful acts.

DATED: June 19, 1997

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Shong-Ching Tong,
Appellant Pro Se